

**BEFORE THE INDIANA
CASE REVIEW PANEL**

In The Matter of E.P.W.,)	
Petitioner)	
And)	CAUSE NO. 061019-48
The Indiana High School Athletic Assoc. (IHSAA),)	
Respondent)	
)	
Review Conducted Pursuant to)	Closed Hearing
I.C. 20-26-14 <i>et seq.</i>)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

Procedural History

E.P.W., (hereafter, “Petitioner”) presently attends Warren Central High School (hereafter, “Warren”), a public high school located in the MSD Warren Township. Petitioner previously attended Snider High School (hereafter, “Snider”) in the Fort Wayne Community Schools. On August 7, 2006, Petitioner enrolled in Warren.

On August 8, 2006, Petitioner, through Warren, requested athletic eligibility according to **Rule C-19-6.1(b)**.¹ The Respondent, by its Assistant Commissioner, on August 29, 2006, found Petitioner was athletically ineligible at Warren for 365 days from the date of his enrollment at Warren Central High School pursuant to the Respondent’s **Rule C-19-4**. **Rule C-19-4** addresses transfers for primarily athletic reasons, and provides, in part, as follows:

To preserve the integrity of interschool athletics and to prevent or minimize recruiting, proselytizing and school ‘jumping’ for athletic reasons, regardless of the circumstances, student athletes who transfer from one school to a new school for primarily athletic reasons or as a result of undue influence will become ineligible to participate in interschool athletics in the new school for a period not to exceed 365 days from the date the student enrolls at the new school . . .

Petitioner, by his father, requested a review of the Assistant Commissioner’s decision by Respondent’s Review Committee. The Respondent’s Review Committee conducted its review on October 5, 2006. The Review Committee determined that the transfer from Snider to Warren

¹Respondent has promulgated a series of by-laws as a part of its sanctioning procedures for interscholastic athletic competition. Some by-laws apply to specific genders, but many of the by-laws are “common” to all potential athletes and, hence, begin with “C.” **Rule C-19-6.1** is “common” to both genders. (All references are to the 2006-2007 by-laws of Respondent.)

was primarily for athletic reasons in violation of **Rule C-19-4**.² The Review Committee issued its decision on October 16, 2006, upholding the Assistant Commissioner's decision declaring Petitioner ineligible at Warren for 365 days from the date of his enrollment at Warren.

APPEAL TO THE CASE REVIEW PANEL

Petitioner appealed to the Indiana Case Review Panel³ on October 19, 2006. On October 24, 2006, the parties were notified of their hearing rights. The record from the investigation and review by Respondent was requested and received. The record was copied and provided to each participating member of the CRP. On October 24, 2006, Legal Counsel for Petitioner notified the CRP that the parent wished for the proceedings in this matter to be closed to the public. Hearing was set for November 28, 2006, at Room 125, State House, Indianapolis, Indiana. The parties received timely notice of the proceedings.

On November 28, 2006, the CRP convened.⁴ The Petitioner appeared and was represented by counsel. The Respondent appeared by counsel. Prior to the hearing a brief pre-hearing conference was conducted. No additional exhibits were offered.

Testimony was provided under oath or by affirmation. During the lunch recess, the student was served with a subpoena to testify. After the lunch recess, the CRP re-convened at 1:00 p.m. The student's attorney orally moved to quash the subpoena on the following grounds: (1) the parent did not wish to subject the student to the stress of testifying as a witness, and that the rigors involved in the hearing rest with the parent, not the student; (2) for parental reasons, the parent and petitioner's attorney chose not to call the student as a witness, petitioner's attorney had not prepared the student witness, and that due to surprise and for fairness, Respondent should not be allowed to subpoena a new witness in the middle of the hearing. Petitioner acknowledged that the usual remedy for surprise is a continuance; therefore, Petitioner in the event the CRP would permit the student to testify, Petitioner requested a continuance; and (3) Indiana recognizes the

²Respondent's by-laws provide the following definition: **Transfer for primarily athletic reasons** - A transfer for primarily athletic reasons includes, but is not limited to:

- a. a transfer to obtain the athletic advantage of a superior, or inferior, athletic team, a superior athletic facility or a superior coach or coaching staff;
- b. a transfer to obtain relief from a conflict with the philosophy or action of an administrator, teacher or coach relative to athletics;
- c. a transfer seeking a team consistent with the student's athletic abilities;
- d. a transfer to obtain a means to nullify punitive action taken by the previous school.

³The Case Review Panel (CRP) is a nine-member adjudicatory body appointed by the Indiana State Superintendent of Public Instruction. The State Superintendent or her designee serves as the chair. The CRP is a public entity and not a private one. Its function is to review final student-eligibility decisions of the IHSAA when a parent or guardian so requests. Its decision does not affect any By-Law of the IHSAA but is student-specific. In like manner, no by-law of the IHSAA is binding on the CRP. The CRP, by statute, is authorized to uphold, modify, or nullify any student eligibility decision by the Respondent. I.C. 20-26-14-6(c)(3).

⁴Seven members were present: Joan L. Keller, Chair; Edwin Baker; Christi L. Bastnagel; Scott F. Eales; James Perkins, Jr.; Stephen Psikula; and Melissa B. Starry.

doctrine of *in loco parentis* such that children are not allowed to testify as to parental decisions, and the student was being asked to testify against parental wishes. The Chair of the CRP asked petitioner's attorney for any authority to support her argument that the student could not testify, if the parent did not consent. Petitioner's attorney provided no authority. The Chair ruled that the student could testify. The Chair did not directly address the Motion for a Continuance; therefore, it is deemed denied. The Chair did advise the parties that questioning of the student was not to be harassing.

In consideration of the testimony and record, the following Findings of Fact and Conclusions of Law are determined.

FINDINGS OF FACT

1. Petitioner (E.P.W.) is a 16-year-old sophomore (d/o/b September 12, 1990) who was enrolled at Snider in the fall of 2006.
2. A decision was made by his parents that E.P.W. should move from his mother's home in Fort Wayne to his father's home in Indianapolis. On Monday, August 7, 2006, E.P.W. was enrolled at Warren in Indianapolis.
3. On August 8, 2006, Petitioner, through Warren, requested athletic eligibility according to **Rule C-19-6.1(b)**.⁵ The *IHSAA Athletic Transfer Report* (hereafter, "Report") part II Reasons For Transfer indicated that the reasons for transfer was that the student transfers to reside with a parent. In part IV question 2, the reason given for the transfer for the receiving school was moved from mom to dad. The "No" box was checked to the question "Have you previously moved between separated or divorced parents since entering high school?"
4. Snider, the sending school, completed its portion of the Report for Petitioner, and indicated that the student should be declared eligible according to **Rule C-19.5**.⁶ The sending school in part III also checked the "No" box to question 5 "Is there any additional investigation that should be made?" The sending school in part III also answered "Move" to question 6 "In your opinion, why did the student withdraw?" Mr. Hawley, Snider's Athletic Director, signed the Report with a date of 8-7-2006, for the sending school.
5. Snider's Athletic Director later indicated that he was going to challenge the transfer because he believed it was done for athletic reasons. On the revised *IHSAA Athletic Transfer Report*, with a date of 8-8-2006, Snider's Athletic Director indicated that the student is moving for athletic reasons and that the student withdrew because he did not

⁵**Rule C-19-6.1(b)** provides for immediate eligibility for the following reason:
The student transfers with a corresponding change of residence by the student into a new district or territory to reside with a parent. Moves between divorced or separated parents may meet this criteria; however, multiple moves between such parents will not be approved unless the reasons for the move are outside the control of the parents and student and are significant, substantial and/or compelling.

⁶**Rule C-19-5** states, in part, as follows: A student who transfers with a corresponding change of residence to a new district or territory by the student's custodial parent(s)/guardian(s) may be declared immediately eligible, provided there is a bona fide change of residence.

- make the varsity football team.⁷ The action recommended by the sending school was that the student should be declared to have Limited eligibility according to **Rule C-19-6.2**.⁸
6. On August 29, 2006, the IHSAA's Assistant Commission, Bobby Cox, ruled that E.P.W. was ineligible under IHSAA **Rule C-19-4**.
 7. On October 16, 2006, the IHSAA's Review Committee upheld the decision of the Assistant Commissioner, which declared E.P.W. ineligible at Warren for 365 days from his enrollment at Warren.
 8. Petitioner is an outstanding athlete and as a freshman (2005-2006 school year), participated in varsity football and freshman basketball. Petitioner is also a good student. The student's grades have improved since he moved to Warren, and the student's father wants the student to obtain a high school diploma.
 9. On August 4, 2006, E.P.W., while a student enrolled at Snider, arrived at an intra-squad game with his legs spated.⁹ Since spating is against Snider's football rules, he was told to remove the spating. E.P.W. removed the tape and he was permitted to play.
 10. At the hearing, the father and student testified that the student's mother moved to Charlotte, North Carolina around the end of October beginning of November, 2006. Testimony was provided by the father of the student that the mother, as a single mother of three children who worked full time and also attended school, experienced financial problems and transportation difficulties in transporting the student from her home to the Snider school which was on the other side of the city of Fort Wayne. Testimony by the father also indicated that the mother had allowed the student to stay at the home of another family because of these transportation difficulties. The father indicated that he did not approve of his son staying with this other family during the school days and wanted the student to live with him. At the hearing, the father of the student testified that he could provide the guidance and supervision the student needed at his home in Indianapolis and the mother finally agreed that the student could move to live with his father. The student's father is employed at the Indiana Boys School and is aware of the problems that teenage boys experience and the risks that can lead to troubled lives. The student's father has coached football and has provided guidance in these athletic endeavors .

CONCLUSIONS OF LAW

1. Although the IHSAA, the Respondent herein, is a voluntary, not-for-profit corporation and is not a public entity, its decisions with respect to student eligibility to participate in interscholastic athletic competition are "state action" and for this purpose makes the IHSAA analogous to a quasi-governmental entity. IHSAA v. Carlberg, 694 N.E.2d 222 (Ind. 1997), *reh. den.* (Ind. 1998). The Case Review Panel has been created by the

⁷Testimony at the hearing indicated that he played on the second squad at the scrimmage, and the CRP was told at the hearing that all those players were considered varsity.

⁸**Rule C-19-6.2** provides that: A student who transfers without a corresponding change of residence to a new district or territory by the student's parent(s)/guardian(s) may be declared to have limited eligibility.

⁹"Spating" an ankle involves placing tape over ankle braces and shoes.

Indiana General Assembly to review final student eligibility decisions with respect to interscholastic athletic competition. I.C. 20-26-14 *et seq.* The Case Review Panel has jurisdiction when a parent, guardian, or eligible student invokes the review function of the Case Review Panel. In the instant matter, the IHSAA has rendered a final determination of student-eligibility adverse to the student. Petitioner has timely sought review. The Case Review Panel has jurisdiction to review and determine this matter. The Case Review Panel is not limited by any by-law of Respondent. The Case Review Panel is authorized by statute to either uphold, modify, or nullify the Respondent's adverse eligibility determination.

2. Any Finding of Fact that may be considered a Conclusion of Law shall be so considered. Any Conclusion of Law that may be considered a Finding of Fact may be considered as such.
3. Limited eligibility is defined in Respondent's by-laws, under the definition section, as: A student who is declared to have limited eligibility shall be eligible to participate immediately in all interschool athletics, provided, however, during the first 365 days from the date of last participation at a previous school, such student may not participate in interschool athletics as a member of a varsity athletic team.

ORDER

1. Respondent's determination that Petitioner is ineligible is modified. Petitioner shall have limited eligibility for 365 days from his last basketball contest. This was determined by a unanimous vote.

DATE: December 13, 2006

/s/ Joan L. Keller, Chair
Indiana Case Review Panel

APPEAL RIGHT

Any party aggrieved by the decision of the Case Review Panel has thirty (30) calendar days from receipt of this written decision to seek judicial review in a civil court with jurisdiction, as provided by I.C. 4-21.5-5-5.